Supreme Court U.S.
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No. 02-0865

In The
Supreme Court of the United States

LOBO GAMING, INC.,

Petitioner,

v.

PIT RIVER TRIBE OF CALIFORNIA,
and PIT RIVER GAMING COMMISSION,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeal Of California,
Third Appellate District

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where an Indian Tribe's Constitution expressly reserves to its general membership the exclusive power to waive tribal sovereign immunity, and specifies the exclusive procedure by which a waiver must be accomplished, and neither condition was satisfied, may the authority to waive nevertheless be implied as a matter of contract law?

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REASONS FOR DENYING THE PETITION

Respondents respectfully request that the Court deny the petition for writ of certiorari for three reasons. First, the State court's unpublished decision below is not citable precedent, and as such it cannot conflict with existing federal or state law. Second, the opinion is correct on the unique facts of this case and is entirely consistent with well-established principles of federal Indian. Finally, petitioner failed to properly invoke this Court's jurisdiction.

The courts below recognized that the respondent Tribe's Constitution expressly reserves to its general membership the exclusive power to waive tribal sovereign immunity, and specifies the exclusive procedure by which a waiver must be accomplished. It was undisputed below that neither condition was satisfied. The Tribe's constitutional provision, read together with well-settled principles of federal Indian law, led both courts below to correctly hold that the Tribe's sovereign immunity was not validly and effectively waived.

Even had the California Court of Appeal published its opinion, it would not conflict with *Smith v. Hopland Band of Pomo Indians,* 95 Cal. App. 4th 1 (2002), contrary to petitioner Lobo Gaming's claims. In *Smith*, the underlying tribal law permitted the Hopland Band's Tribal Council to waive that Tribe's immunity by resolution, which it admitted doing. Here, by contrast, the respondent Tribe's Constitution reserves the power to waive immunity exclusively to the Tribe's general membership, and specifies the exact procedure by which any valid waiver must be granted. Neither condition was met. Given the differing tribal law and differing facts, it is unremarkable that the

Court of Appeal here reached a different result than did the *Smith* court. The reasoning underlying the opinions in both cases, however, is harmonious.

Nor is there any important legal question requiring resolution by this Court. It is well-settled that absent a valid, effective waiver, federally recognized Indian tribes retain sovereign immunity from suit. It is undisputed that the Pit River Tribe's constitutional language expressly reserves to its general membership the power to waive immunity, and does not grant that power to the small group of elected officials, the Tribal Council, that purportedly attempted to grant a waiver. It is equally settled that the Tribe has the right to be governed by its own laws and that non-members who come onto the reservation and voluntarily engage in consensual economic relations with a tribe, such as Lobo Gaming did here, subject themselves to tribal civil law. This Court's precedents have long settled these bedrock principles of federal Indian law, and they need not be revisited.

Finally, as alleged by Lobo Gaming, this Court lacks jurisdiction to grant the petition. Lobo's petition invokes this court's jurisdiction exclusively pursuant to 28 U.S.C. § 1254(1), which has no application here as Lobo does not petition from a case in a United States Court of Appeals. Moreover, Lobo's petition claims the lower court relied exclusively on tribal, rather than federal, law in reaching its decision. Thus even had Lobo Gaming invoked § 1257, permitting review of State court decisions, by Lobo's own characterization, the lower court did not decide the case based on a question of federal or state law.

No compelling reason exists for granting the petition, and this Court's jurisdiction has not been properly

invoked. For all of these reasons, the Petition should be denied.

STATEMENT OF THE CASE

A. The Pit River Tribe's Constitution Reserves to the General Membership the Exclusive Power to Waive Sovereign Immunity

Just as the United States Constitution separates powers among three distinct branches of government, so too does the Constitution of the Respondent Pit River Tribe of California ("Tribe"), a federally-recognized Indian Tribe.[1] The Tribe consists of eleven autonomous Bands, each of which elects a single representative to a Tribal Council. All adult enrolled tribal members constitute the Tribe's registered voters.

The registered voters collectively, the individual Bands, and the Tribal Council, each has distinct powers enumerated in the Tribe's Constitution. A true and correct copy of the Tribe's federally-approved Constitution is reproduced in the Appendix to this Respondent's Brief ("Resp. App.") *See* Constitution of the Pit River Tribe at Art. VII, § 1, Resp. App. at 7 (Tribal Council powers); *id.* at § 2, Resp. App. at 9 (Band powers); *id.* at § 3, Resp. App. at 10 (Reserved powers).

[1] Respondent Pit River Gaming Commission ("Commission") is the Tribe's gaming regulatory agency created and operated pursuant to a duly enacted and federally-mandated tribal ordinance. *See* 25 U.S.C. § 2710(d)(2).

The Tribe's Constitution expressly reserves the power to waive tribal sovereign immunity to the general membership, and specifies the exclusive process by which any valid waiver must occur:

> Section 3. Reserved Powers
>
> a. To waive the sovereign immunity of the Tribe to unconsented suit; however, no waiver of sovereign immunity shall be made except by a majority of the registered voters voting thereon at a meeting duly called, noticed and convened for that express purpose.

Const., Art. VII, § 3, ¶ a, Resp. App. at 10. As the California Court of Appeal noted, "[i]t is undisputed that the registered voters of the Tribe never voted on, and never approved, the agreement, nor did they vote on or approve any proposal for the Tribe to waive its sovereign immunity." Pet. App. at 3a.

The clause reserving to the general membership the exclusive power to waive sovereign immunity is the only reference to sovereign immunity in the Pit River Constitution. The Constitution separately enumerates the powers of the elected Tribal Council; significantly, however, nowhere in the Constitution is the Tribal Council vested with the power to waive the Tribe's sovereign immunity. *Cf.* Const., Art. VII, § 1, Resp. App. at 7-9. This is particularly noteworthy given that the Tribe as a whole also reserved for itself all powers not expressly delegated elsewhere in the Constitution. *See id.* at Art. VII, § 3, ¶ d, Resp. App. at 10.

B. The Contractual Dispute

Lobo Gaming alleges that in 1996, it entered into a contract to loan the Tribe money to build two casinos and lease to the Tribe various gambling machines, furniture and equipment for the casinos. As noted above, it is undisputed that the Tribe's registered voters never voted on, and never approved, the contract, nor did they vote on or approve any waiver of the Tribe's sovereign immunity in connection with Lobo Gaming's purported agreement. *See* Pet. App. at 3a. It is also undisputed that the Tribe paid Lobo approximately $1.7 million on an $800,000 loan, representing a greater than 100% return over an approximately three-year period.

Lobo Gaming nevertheless continued to claim it was owed additional amounts. The Tribe, on the other hand, noted that Lobo Gaming breached the alleged agreement in a number of material ways, not the least of which was failing to cooperate in the licensing process (including criminal background investigations) and failing to obtain a gaming license, all as required by State, federal and tribal law. *See* Hawkins Decl., ¶¶ 6-7; 25 U.S.C. § 2710(b)(2)(F); *id.* at § 2710(d)(2); 25 C.F.R. § 522.2(b)-(c); Tribal-State Gaming Compact Between the State of California and the Pit River Tribe, § 6; Pit River Tribal Gaming Ordinance, § 10. Tribal licensing is conducted under tribal gaming ordinances mandated and established by federal law. *See* 25 U.S.C. § 2710(b)(1)(B); *id.* at § 2710(d)(1)(A)(ii); 25 C.F.R. Part 522. Lobo Gaming also failed to build the second casino it had promised the Tribe.[2]

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[2] Because of the threshold bar of the Tribe's sovereign immunity, the underlying facts regarding the contract and the parties' alleged

(Continued on following page)

C. The Decisions Below

The Tribe and Commission moved to quash service of summons and complaint on sovereign immunity grounds. The State trial court properly granted the motion, finding that:

> specially-appearing defendants are entitled to sovereign immunity in matters of commerce, including contracting. Defendant Tribe's Constitution, Art. VII § 1, confers on the Tribal Council power to contract, but Art. VII, § 3 reserves to the Tribe power "to waive sovereign immunity of the Tribe to unconsented suit." Plaintiff has failed to establish that the tribe waived its immunity, and has therefore failed to establish this Court has jurisdiction over the defendants.

Order Granting Specially-Appearing Defendants' Motion to Quash Service of Summons, Pet. App. at 15a-16a. The Court of Appeal affirmed in an unpublished opinion, holding that "the Pit River Tribal Council . . . did not have the authority to waive immunity without the consent of

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performance or breach have not been litigated. Indeed, the Complaint was not Answered. Nevertheless, the Tribe is obligated to briefly address several of Lobo Gaming's more serious factual misstatements. *See* S. Ct. R. 15(2). First, Lobo's claim that the Tribal Council "held itself out" as having the power to waive the Tribe's sovereign immunity is false. The Tribe would contend that no such representation was ever made, nor could it have been given the constitutional language discussed above. Second, Lobo's claim that the Tribe "made no payments on the loan" is false. The Tribe would contend that it paid approximately $1.7 million in repayment on an $800,000 loan. Third, Lobo's claim that its "costs" exceeded $2 million is misleading. The Tribe would contend that this figure includes unaudited claims by Lobo to alleged lost profits, unearned salaries for its executives, and similar matters that are not "costs" in any conventional sense.

the tribal membership and such authority is not implicit in the Tribal Council's power to contract." Pet. App. at 2a.

ARGUMENT

A. There Is No Potential Lack of Uniformity of Decision Because the Opinion Below Was Not Published

The California Court of Appeal did not publish its opinion in this case. *See* Pet. App. at 1a ("NOT TO BE PUBLISHED"). California Rule of Court 977(a) provides that an unpublished opinion "shall not be cited or relied on by a court or a party. . . . " *Id. See also R & P Capital Resources, Inc. v. California State Lottery*, 31 Cal. App. 4th 1033, 1040 (1995) ("None of the orders or decisions are published cases and therefore are not properly citable as authority"); *Casella v. City of Morgan Hill*, 230 Cal. App. 3d 43, 58 (1991) ("We have not reviewed, or relied on, any unpublished opinion").[3] *Cf.* Ninth Circuit Rule 36-3 (as a general rule, "unpublished dispositions" are "not binding precedent" and "may not be cited to or by the courts of this circuit . . . ").

As a "typical opinion" not warranting publication under California Rule of Court 976(b), the decision "add[s] nothing to the body of stare decisis, and if published would merely clutter overcrowded library shelves and databases with information utterly useless to anyone other than the

[3] The Rule's very narrow exceptions are, by definition, not applications that could create a threat of inconsistency of decision. *See* Cal. R. Ct. 977(b).

actual litigants [here]in and complicate the search for meaningful precedent." *Schmier v. Supreme Court of California*, 78 Cal. App. 4th 703, 712 (2000). Recognizing this, the Tribe did not request publication under California Rule of Court 978.

Lobo Gaming's petition repeatedly urges this Court to grant its petition to resolve conflicts between the lower court's decision and other precedents, *see, e.g.*, Petition at 7, 11, 13, yet entirely fails to address this fundamental point. Without publication, there can be no conflict. For this reason alone, the petition should be denied.

B. Even Had it Been Published, the Opinion Below Would Not Conflict With *Smith*

Lobo Gaming's Petition claims a lack of uniformity with the case of *Smith v. Hopland Band of Pomo Indians*, 95 Cal. App. 4th 1 (1st Dist. 2002). Lobo is wrong. To those unfamiliar with Indian law, *Smith* might at first blush seem relevant: after all, it involves an Indian Tribe as a party to a contract in which the Tribe allegedly granted an immunity waiver. In fact, the *Smith* decision and the decision below in this case are readily harmonized. Their different results stem from the fundamentally differing tribal laws of two independent sovereign tribes, and the facts resulting therefrom.

Whereas the Pit River Tribe's Constitution expressly reserves to its general membership the power to waive immunity, the Hopland Band's elected tribal council possessed the power under tribal law to waive that tribe's immunity by council resolution. *See Smith*, 95 Cal. App. 4th at 4. A tribal leader admitted "that the Tribal Council, by resolution, approved the contracts" containing a waiver.

Id. at 7. Not surprisingly, the *Smith* court thus found that the terms of the tribal ordinance were satisfied because "the Tribal Council did pass a resolution approving the contract." *Id.* at 9.

The court found that:

> the purpose of the Tribal sovereign immunity ordinance is to insure that no waiver of sovereign immunity is made by a single Tribal officer, and that instead such waivers be made only by formal action of its governing body, the Tribal Council. That purpose is served here because, the Tribal Council, with full knowledge of its terms, approved the contract by resolution.

Id. at 9.

In our case, the purpose of the Pit River Tribe's constitutional reservation of the power to waive immunity is to insure that no waiver is made by the Tribal Council or any individual tribal member or Band, but instead that waivers are only granted by formal action of "a majority of the registered voters voting thereon at a meeting duly called, noticed and convened for that express purpose." Const. Art. VII, § 3, ¶ a, Resp. App. at 10.

Any proposal to subject the Pit River Tribe to suit must be carefully considered by the membership as a whole. It was taken so seriously as to be enshrined in the Tribe's Constitution as the very first reserved power. *See id.* Indeed, the provision even requires a special membership meeting for the specific purpose of deciding whether a waiver should be granted. *See id.* There is no subtlety or ambiguity in the constitutional requirement.

Unlike *Smith*, where tribal law permitted the elected Tribal Council to waive immunity and the court found that it had done so, the purpose of tribal law was not served here. The Tribe's exclusive waiver process, which was obviously designed to give its membership a voice in such matters, simply did not occur. *See* Pet. App. at 3a.

Smith also relied on the fact that "the contract itself specifies that it is to be governed by California law." *Id.* at 10. Thus "for purposes of interpreting and enforcing this contract, respondent agreed to be governed by California law, not tribal law." *Id.* at 11.[4] In our case, on the other hand, the purported contract Lobo Gaming sued upon does not contain a choice of law provision. Under settled principles of federal Indian law discussed below at section (C)(2) of this Respondents' Brief, tribal law governs both the Tribe and Lobo since it engaged in "consensual relationships with the tribe or its members, through commercial

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[4] In *dicta*, *Smith* questioned the need to refer to tribal law. *See id.* at 10. Curiously, its short discussion of this issue, *see id.*, failed to mention this Court's precedent's discussed below at section (C)(2) of this Respondent's Brief, holding that Tribes retain the sovereign right to be governed by their own law. *See New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 332 (1983); *United States v. Wheeler*, 435 U.S. 313, 322 (1978); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 171-72 (1973); *Williams v. Lee*, 358 U.S. 217, 219-20 (1959); *United States v. Kagama*, 118 U.S. 375, 381-82 (1886). *Smith's dicta* also failed to cite or discuss this Court's precedents, also discussed below, holding that Indian tribes' civil laws apply to non-members who engage in consensual economic relations with Tribes on the reservation, as occurred here. *See Nevada v. Hicks*, 533 U.S. 353, 371 (2001); *Atkinson Trading Co., Inc. v. Shirley*, 532 U.S. 645, 651 (2001); *Strate v. A-1 Contractors*, 520 U.S. 438, 456-57 (1997); *South Dakota v. Bourland*, 508 U.S. 679, 695 (1993); *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, 492 U.S. 408, 419 (1989); *Montana v. U.S.*, 450 U.S. 544, 565 (1981).

dealing, contracts, leases, or other arrangements." *Montana v. U.S.*, 450 U.S. 544, 565 (1981).

Smith concluded that "we are not presented with a circumstance in which a tribal agent has signed a contract without authority to act on the Tribe's behalf." *Id.* at 8. Here, the circumstances are different: it is undisputed that the Pit River Tribe's Constitution reserves to the general membership the power to waive the Tribe's sovereign immunity, and that the general members never approved a waiver as to Lobo. *See* Pet. App. at 2a-3a; Const., Art. VII, § 3, ¶ a, Resp. App. at 10.

For these reasons, even if the Court of Appeal's opinion below in our case had been published, it would not create any lack of uniformity with *Smith*. Thus, the petition should also be denied for this reason.

C. There Is No Important Legal Question for this Court to Settle

The legal issues involved in this case do not require the Court's attention because they are well-settled matters of federal Indian law.

1. The Law of Tribal Sovereign Immunity Is Settled

This Court has long recognized that Indian tribes possess "the common-law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978). This immunity extends to suits on contracts, regardless of whether they involve commercial or governmental activities, or were

made on or off a reservation. *See Kiowa Tribe of Oklahoma v. Manufacturing Techns., Inc.*, 523 U.S. 751, 760 (1998).

Because federal Indian policy favors preserving tribal resources and autonomy, this Court has repeatedly stated that a waiver of tribal sovereign immunity "'cannot be implied but must be unequivocally expressed.'" *Santa Clara Pueblo*, 436 U.S. at 58-59 (*quoting United States v. Testan*, 424 U.S. 392, 399 (1976); *United States v. King*, 395 U.S. 1, 4 (1969)). "Absent an *effective* waiver or consent," Indian tribes are immune from suit. *Puyallup Tribe, Inc. v. Department of Game*, 433 U.S. 165, 172 (1977) (emphasis added). An unauthorized or *ultra vires* purported waiver of tribal sovereign immunity is per se "[in]effective. . . . " *Id. Cf. Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1322 (9th Cir. 1983) (tribal official's acceptance of service of process did not waive tribal immunity); *World Touch Gaming, Inc. v. Massena Mgmt. LLC*, 117 F. Supp. 2d 271, 275 (N.D.N.Y. 2000) (the "Management Agreement . . . cannot be read to authorize waiver of sovereign immunity"); *Danka Funding Co., LLC v. Sky City Casino*, 329 N.J. Super. 357, 366, 747 A.2d 837, 842-43 (1999) ("The Tribe, through its laws, describes how one may obtain a legally enforceable waiver of that immunity. Neither Danka Business Services nor Danka Funding took advantage of those provisions"); *Hydrothermal Energy Corp. v. Fort Bidwell Indian Community Council*, 170 Cal. App. 3d 489, 496 (1985) ("[tribal chairperson] Lame Bull could not waive the tribe's immunity, unless the Tribe had expressly delegated that duty to her. Nothing in the Tribe's Constitution and bylaws gave her such authority").

The purported waiver contained in the Agreement with Lobo Gaming did not effect a waiver of the Tribe's sovereign immunity.[5]

2. Tribal Law Governs the Tribe and Lobo Gaming

Lobo Gaming has never disputed the Tribe's right to be governed by its own Constitution. Nor has Lobo Gaming ever disputed that it was also subject to tribal civil law by virtue of having engaged in consensual economic relations with the Tribe on its reservation. To the extent that Lobo at this late hour seeks to contest these settled matters, it is procedurally untimely and substantively wrong. *See* S.Ct. Rule 14(1)(g)(i) (requiring Lobo to specify "the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal

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[5] To *imply* the authority to waive immunity in the distinct power to contract as Lobo Gaming urges would ignore the express language to the contrary in the Tribe's Constitution, and would also violate the controlling rule that waivers of tribal sovereign immunity must be express and unequivocal and that Indian tribes do not waive sovereign immunity merely by entering a contract. *See Kiowa Tribe*, 523 U.S. 751, 118 S. Ct. 1700; *Santa Clara Pueblo*, 436 U.S. at 58-59. Lobo Gaming's reliance in this regard on *Namekagon Development Co., Inc. v. Boise Forte Reservation Housing Authority*, 395 F. Supp. 23 (D. Minn. 1974) *aff'd*, 517 F.2d 508 (8th Cir. 1975), is misplaced.

The issue in *Namekagon* was whether a tribal corporation – the Bois Forte Reservation Housing Authority – was immune from suit. While the district court dismissed the tribe and its business committee from the suit on sovereign immunity grounds, it ruled that "the Housing Authority [was] a separate corporation not cloaked with the Tribe's legal immunity." 395 F. Supp. at 26. Obviously, the issue addressed in *Namekagon* is far afield from the issue decided here by the Court of Appeal.

questions sought to be reviewed were raised; the method of raising them and the way in which they were passed on by those courts"); *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (Court generally has "adhered to the rule in reviewing state court judgments . . . that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review").

Lobo's verified complaint alleged that "[s]ubstantially all material acts alleged herein took place on the Tribe's reservation," Verified Complaint at ¶ 4. Lobo failed to raise any question below about the application of the Tribe's Constitution to the Tribe and its consequential effect on Lobo. Even if the Court were inclined to examine these new issues, it would not aid Lobo.

The fact that the Tribe is governed by its Constitution is axiomatic. This Court has long held that "[a] tribe's power to prescribe the conduct of tribal members has never been doubted, and our cases establish that 'absent governing Acts of Congress,' a State may not act in a manner that 'infringed on the right of reservation Indians to make their own laws and be ruled by them.'" *New Mexico v. Mescalero Apache Tribe*, 462 U.S. at 332 (*quoting McClanahan*, 411 U.S. at 171-72; (*quoting Williams*, 358 U.S. at 219-20); and *citing Fisher v. District Court*, 424 U.S. 382, 388-89 (1976) (per curiam)). This Court has consistently held for more than a century that "[t]he sovereignty retained by tribes includes 'the power of regulating their internal and social relations . . . .'" *Mescalero Apache Tribe*, 462 U.S. at 332 (*quoting Kagama*, 118 U.S. at 381-82; and *citing Wheeler*, 435 U.S. at 322).

Lobo Gaming subjected itself to the effects of tribal civil law by voluntarily coming onto the Tribe's reservation and doing business. As this Court noted years before, Lobo Gaming engaged in business dealings with the Tribe, "[a] nonmember who enters the jurisdiction of the tribe remains subject to the risk that the tribe will later exercise its sovereign power." *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 145 (1982).

This Court has long held that "[a] tribe may regulate . . . the activities of nonmembers who enter into consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Montana*, 450 U.S. at 565. This decades-old jurisdictional rule remains the law today. *See Hicks*, 533 U.S. at 371; *Atkinson Trading Co., Inc.*, 532 U.S. at 651; *Strate*, 520 U.S. at 456-57; *Bourland*, 508 U.S. at 695; *Brendale*, 492 U.S. at 419.[6]

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[6] Lobo Gaming's reliance on cases finding waivers of sovereign immunity inherent in the act of contracting misses the point entirely. None of the cases Lobo Gaming cites involve sovereign entities with express constitutional provisions regarding the authority and procedure for granting valid immunity waivers. This is not to say that the Pit River Tribe's constitutional provisions regarding immunity are necessarily unique. *See, e.g., Kondos v. West Virginia*, 318 F. Supp. 394 (S.D. W.Va. 1970) (West Virginia Constitution provided that the State's immunity from suit cannot be waived by the Legislature); *Schultz v. Greater New Orleans Expressway Commission*, 250 F. Supp. 89 (E.D. La. 1966) (Louisiana Constitution authorized the Legislature to waive the State's immunity, but provided that "No suit authorized under this constitutional provision shall be instituted in any court other than a Louisiana State court").

D. This Court Lacks Certiorari Jurisdiction Over This Case

As alleged by Lobo Gaming, this Court lacks jurisdiction to grant the petition. Lobo's petition invokes this court's jurisdiction exclusively pursuant to 28 U.S.C. § 1254(1), which simply does not apply here. *See Key v. Doyle*, 434 U.S. 59, 72, n. 5, 98 S.Ct. 280, 287 n. 5 (1977) (noting that "the scope of appellate jurisdiction specified by § 1257 for state-court decisions is different from that provided under § 1254 for decisions of the United States courts of appeals") (White, J., dissenting). Lobo does not petition from a case in a United States Court of Appeals.

Petitions for writs of certiorari to review State court decisions must satisfy the jurisdictional criteria of 28 U.S.C. § 1257. Section 1257 only allows this Court to review state court decisions

> where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Id. at § 1257(a).

Lobo's petition claims the lower court relied exclusively on tribal, rather than federal, law in reaching its decision. *See* Petition at 10 ("In making this determination the court looked exclusively at tribal law, *i.e.*, Article VII § 3.a of the Tribal Constitution"). While the lower court's

opinion certainly discusses settled principles of tribal sovereign immunity, the case was indeed decided based on tribal law. The federal courts' interpretations of tribal law might be characterized as federal common law, but Lobo has not made that argument.

In *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), this Court acknowledged that it "can have no concern with the substantive merits of common-law decisions reached by state courts faithfully applying their own law or the law of another State." *Id.* at 834. The same may be said of a State court applying the law of an Indian tribe in a case in which no federal rights, privileges or immunities are at issue. Nothing on the face of 28 U.S.C. § 1257 gives this Court certiorari jurisdiction to review such a case.

Phillips Petroleum Co. explained that "[t]he Constitution does not expressly mandate particular or correct choices of law. Rather, a state court's choice of law can invoke constitutional protections, and hence our jurisdiction, only if it contravenes some explicit constitutional limitation." *Id.* at 834. Lobo Gaming complains that the lower State court erred by choosing to adhere to clear, explicit tribal law, but does not allege that this purported error contravened any explicit federal constitutional, statutory or treaty limitation.

Thus even had Lobo Gaming's petition invoked 28 U.S.C. § 1257, by its own characterization, the lower court did not decide the case based on a question of federal or state law allowing review by this Court.

CONCLUSION

The Court of Appeal's judgment was not published, does not create any lack of uniformity in California or federal law, and does not present an important legal question requiring resolution by this Court. Petitioner also failed to properly invoke this Court's jurisdiction. For these reasons, the Tribe and Commission respectfully request that the Court deny the petition.

Respectfully submitted,

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CONSTITUTION OF THE PIT RIVER TRIBE

PREAMBLE

The Pit River Tribe, a Tribe of eleven (11) autonomous bands of Indians that adopted a formal written Constitution on August 16, 1964, for the purpose of securing our Rights & Powers inherent in our Sovereign status as reinforced by the laws of the United States, developing and protecting Pit River (Ajumawi – Atsugewi) ancestral lands and all other resources, preserving peace and order in our community, promoting the general welfare of our people and our descendants, protecting the rights of the Tribe and of our members, and preserving our land base, culture and identity, does hereby establish this revised Constitution.

ARTICLE I – NAME

The name of this entity is the Pit River Tribe (Ajumawi – Atsugewi Nation) comprised of the eleven (11) autonomous bands: Ajumawi, Atsugewi, Atwamsini, Ilmawi, Astarawi, Hammawi, Bewisedawi, Itsatawi, Aporige, Kosalektawi and Madesi, that since time immemorial have resided in the area known as the 100-mile square, located in parts of Shasta, Siskiyou, Moduc, and Lassen Counties in the State of California, as referred to in Pit River Docket No. 347, (7 ICC B15 at 844), Indian Claims Commission.

ARTICLE II – TERRITORY AND JURISDICTION

Section 1. Territory. The territory of the Tribe consists of all ancestral lands recognized by the Indian Claims Commission in its July 29, 1959, (7 Indian Claims Commission, 815-863 Appendices A & B pages 1-49) findings of

fact and opinion in Docket No. 347, i.e., the 100-mile square as described in Docket No. 347, and specifically including, but not limited to, the XL Ranch, Montgomery Creek, Roaring Creek, Big Bend, Burney, Lookout and Likely Rancherias, the 13 acres deeded to the United States by the State of California in trust for the Pit River Home and Agricultural Cooperative Association as trustee for the Tribe, Modoc County Assessor's parcels 013-172-07 and 013-191-01, and any other property that hereafter may be acquired by or for the Tribe.

Section 2. Jurisdiction. The jurisdiction of the Tribe under this Constitution shall extend throughout its territory. Nothing in this Article shall be construed to limit the ability of the Pit River Tribe (Ajumawi-Atsugewi Nation) to exercise its jurisdiction to the fullest extent permitted by Federal law, including but not limited to, lands, waters, properties, air space, fish and wildlife and other resources.

ARTICLE III – MEMBERSHIP

Section 1. Membership Criteria. Membership in the Pit River Tribe (Ajumawi-Atsugewi Nation) shall be open to all persons who meet the following criteria:

a. He/She is at least 1/4 Pit River Indian blood and is not enrolled in any other federally recognized Tribe.

b. Any child born to enrolled members regardless of blood quantum and as long as he/she is not enrolled in any other federally recognized Tribe.

Section 2. Base Membership Roll. There shall be a Base Membership Roll which shall consist of the persons who are deemed to have met the criteria set forth in Section I hereof by virtue of any one of the following:

a. He/She was accepted into Tribal membership under the Constitution adopted on August 16, 1964, or

b. He/She was listed by the Bureau of Indian Affairs as eligible to register to vote in the the [sic] election of the Constitutional Drafting Committee held on December 10, 1983, or

c. He/She was listed as a Pit River Indian on the 1928 Census roll and is at least 1/4 Indian blood or descendant thereof.

Section 3. Enrollment of Additional Members. All other persons who hereafter meet the criteria set forth in Section 1, and Section 2, shall be eligible to enroll for membership under an ordinance hereafter enacted by the Tribal Council.

Section 4. Revocation of Membership by Enrollment in another Federally Recognized Tribe. Membership in the Nation shall be automatically revoked upon a person's enrolling as a member of any other federally recognized Indian Tribe. Any person whose membership is revoked for this reason may be reinstated as a member of the Pit River Tribe (Ajumawi-Atsugewi Nation) upon his/her submission of proof to the Tribal Council that he/she has withdrawn his/her enrollment in all other federally recognized Indian Tribes or, in the alternative, that he/she has taken all necessary and reasonable steps to effectuate a withdrawal of his/her enrollment in all other federally recognized Indian Tribes.

ARTICLE IV – BILL OF RIGHTS

The Pit River Tribe (Ajumawi-Atsugewi Nation) in exercising its powers shall guarantee to all persons subject to its jurisdiction the applicable protections set forth in the

Indian Civil Rights Act of April 1, 1968, (82 Stat. 77) except as may be inconsistent with the exercise of the Tribe's right to its traditional form of Tribal government.

ARTICLE V – OCCUPANCY PRIVILEGES OF EXISTING RESIDENTS OF TRIBAL LANDS

Section 1. XL Ranch. There are on the XL Ranch certain lands and structures which have been assigned to specific persons under revocable permits issued by the Bureau of Indian Affairs and/or the Pit River Home and Agricultural Cooperative Association. Said revocable permits did not create or confer upon any individual any vested rights to XL Ranch lands or improvements, and the Tribe does not recognize the existence of any such rights. However, in order to avoid the imposition of undue hardship upon Tribal members who in good faith have lived on the XL Ranch pursuant to and in compliance with such revocable permits, the Tribe hereby establishes the following procedure to ensure that said members receive preference in the assignment of such Tribal lands as they heretofore have used and occupied under and in compliance with revocable permits:

a. Each person holding revocable homesite and farm/pasture field permits on February 3, 1975, shall be entitled to apply for a lifetime, non-inheritable assignment of the same homesite and farm/pasture field, subject to the same terms and conditions as his/her revocable permit in effect on February 3, 1975, and such application shall be granted in accordance with procedures established pursuant to Section 3 of this Article;

b. If the permit-holder as of February 3, 1975, is deceased, his/her resident spouse or an adult Indian member

of the deceased permittee's immediate family who was an actual and permanent resident of the deceased permittee's household on the XL Ranch on February 3, 1975, shall be entitled to apply for the non-inheritable lifetime assignment for which the deceased permittee would have been eligible if living. No further or other preferences in the assignment of Tribal lands shall be given;

c. No permittee as of February 3, 1975, shall be entitled to the preferential assignment of more than one homesite and/or farm/pasture field; no permittee or successor of a deceased permittee shall be entitled to the preferential assignment of any land not actually permitted to him/her or his/her predecessor on February 3, 1975;

d. Each permittee to whom a lifetime assignment is made and who actually was engaged in raising cattle on the XL Ranch on February 3, 1975, shall be entitled during the duration of his/her assignment to continue to use XL Ranch grazing lands to raise his/her own cattle, provided that the Tribal Council shall have full authority to assign all grazing lands and to determine the number of cattle which may be pastured on each grazing unit.

Section 2. Rancherias. This section shall include the unallotted Pit River trust lands known as Big Bend, Montgomery Creek, Roaring Creek, Likely, Lookout and the forty (40) acres acquired adjacent to Montgomery Creek in 1984. Each Pit River Indian head-of-household who is an actual resident on the effective date of this Constitution and who has resided thereon for at least three (3) years prior to the date or has moved off the Rancheria for socio-economic reasons with the intent to re-establish residency shall be guaranteed continued use and occupancy of such residence and other real property upon

application to the Tribal Council. All others who are residents on the effective date of this Constitution have the right to apply for a homesite. The Tribal Council retains the right to accept or deny all applications subject to the right of appeal to the Tribal court established pursuant to Section 1(o) of Article VII.

Section 3. The Tribal Council shall enact a tribal ordinance governing the use, assignment, permitting, lease or other disposition of lands, interest in lands and resources of the Tribe consistent with this Constitution and Federal law.

ARTICLE VI – LEGISLATIVE & EXECUTIVE

Section 1. Legislative Department. The Legislative Department of the Tribe shall be the Tribal Council, composed of the elected Representatives of the eleven (11) component Bands. Candidates for Band representatives to the Tribal Council (Councilperson) shall be nominated from among and elected by the majority vote of those band members in attendance at the annual Tribal election meeting in August, or at a specially-called band meeting within thirty (30) days after the annual meeting. All council positions will be for the term of one (1) year.

Section 2. Executive Department. The Executive Department of the Tribe shall be the Tribe's Officers, and shall consist of the Tribal Chairman, Vice-Chairman, Secretary, Recording Secretary, Treasurer and Sergeant-at-Arms. It shall be the responsibility of the Executive Department to carry out the laws and policies enacted by the Tribal Council. The Tribal Chairman shall be elected for a term of two (2) years; all other officers shall be elected for a term of one (1) year. These positions shall be

filled from and elected by the general membership at the annual meeting in August.

ARTICLE VII – POWERS

Section 1. Tribal Council. The Tribal Council shall have the following powers:

a. To negotiate, consult and contract with Federal, State and Tribal governments, private enterprises, individuals and other organizations.

b. To employ and discharge legal counsel; the choice of counsel and fixing of fees are subject to the approval of the Secretary of the Interior as long as such approval is required by Federal law.

c. To prevent the sale, disposition, lease or encumbrance of Tribal lands, interests in land or other Tribal assets that are not in the best interest of the tribe.

d. To Charter and regulate independent organizations, subordinate organizations, committees and boards of officials of the Tribe and delegate powers as appropriate, retaining the right to supervise and rescind delegated powers.

e. To plan and manage all economic affairs and enterprises of the Tribe.

f. To regulate the use of Tribal privileges and property.

g. To disburse Tribal funds as the council deems appropriate for the benefit of the Tribe.

h. To promote and protect the health, peace, morals, education, safety and welfare of the Tribe, its members and all other persons within its jurisdiction, and

govern the conduct of Tribal members while on Tribal property.

i. To regulate all Administrative and Legislative bodies of the Tribe, Tribal agencies, officers and organizations.

j. To levy such taxes as may be deemed appropriate on persons, property and business enterprises that are under Tribal jurisdiction. The Tribal Council shall determine the rate and use of such taxes.

k. To provide for the exclusion of persons from Tribal property or membership for good cause. Such exclusion shall be pursuant to a Tribal ordinance that provides for due process of law.

l. To assign, lease or regulate Tribal lands, interests in lands or other Tribal assets, subject to such approval for leasing as may be required by Federal law.

m. No single Council member or group of Council members can act on behalf of the Tribe without the approval of a quorum of the Council.

n. To form or join Tribal courts, consortiums and other Indian organizations for the purpose of asserting and protecting the rights of the Tribe and its members under the Indian Child Welfare Act of 1968 (25 U.S.C. Section 1901, et seq.), and reassuming jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act (25 U.S.C. Section 1918).

o. To establish a Tribal judicial system and promulgate Tribal Court rules.

p. To appoint a Council designee to act in the absence of the Tribal Chairman or Officers.

q. To sue on behalf of the Tribe.

r. To enact an Ordinance providing for the establishment of an appointed advisory committee of elders to consult with the Council on matters pertaining to Tribal lands, membership and traditions.

s. To enact all ordinances and resolutions which shall be necessary and proper for carrying into effect the foregoing powers.

t. To exercise all powers vested in it by existing law, Tribal traditions and applicable Federal and State law, and such further powers as may in the future be granted to the Tribal Council by members of the Tribe, the United States or the State of California.

Section 2. Band Powers. Each band shall have the following powers:

a. The band is to approve its own membership subject to eligibility requirements as set forth in Article III – Membership, and to keep a current band roll so as not to allow dual enrollment in other ancestral bands.

b. To have priority approval/disapproval in matters of individual Band religious, cultural and/or archaeological concerns, provided that such concerns are not a detriment to the Tribe as a whole.

c. To form a cultural resource committee to protect and promote its individual heritage.

d. To choose and elect a person of its choice to represent the band on the Tribal Council, and to elect an alternate Council person who may sit in the absence of the Council person.

e. The Band is an autonomous unit within the Tribe and has the right to choose not to participate in Tribal affairs; *provided* that a majority of the registered voters of that particular Band votes not to participate at

a specially-called, duly-petitioned and noticed meeting conducted for that purpose by the Tribe's Election Committee. A Band which has elected not to participate in Tribal affairs may rescind that election by the vote of a majority of the registered voters of the Band at a specially-called, duly-petitioned and noticed meeting conducted for that purpose by the Tribe's Election Committee.

Section 3. Reserved Powers.

a. To waive the sovereign immunity of the Tribe to unconsented suit; however, no waiver of sovereign immunity shall be made except by a majority of the registered voters voting thereon at a meeting duly called, noticed and convened for that express purpose.

b. To veto decisions of the Tribal Council under the procedures of Article IX, Elections.

c. To decide issues of land sales, with no provisions for absentee balloting on such issues.

d. To exercise any rights and powers vested in the Tribe, but not expressly referred to in this Constitution; however, such exercise shall be by vote of a majority of the registered voters voting thereon at a meeting duly called, noticed and convened for that express purpose.

ARTICLE VIII – DUTIES OF OFFICERS

Section 1. Tribal Chairman. The Chairman shall exercise the following powers and such other powers as the Tribal Council may assign:

a. The Chairman shall preside at all meetings in accordance with the provisions of this Constitution;

b. The Chairman shall execute for and on behalf of the Pit River Tribe (Ajumawi-Atsugewi Nation) any and all papers, documents and writings authorized by the Council at any annual, regular or special meeting thereof;

c. The Chairman shall appoint the members of all special committees authorized by the Tribal Council;

d. The Tribal Chairman shall have general supervision over the executive department of the Tribal government;

e. The Chairman shall act as the official spokesman or representative of the Tribe, except when the Tribal Council has designated another person for that purpose;

f. The Chairman shall have the power to appoint an Acting Secretary and/or Acting Recording Secretary if the absence of either officer renders such appointment necessary to conduct Tribal Business.

Section 2. Vice-Chairman. The Vice-Chairman shall act with the power and authority of the Chairman in his/her absence or disability, and may, if authorized by the Chairman, assist the Chairman in the performance of his duties.

Section 3. Secretary. The Secretary shall receive and, upon request of the Chairman, answer or attest to the authenticity of all correspondence for the Tribe and the Council, and shall keep and maintain files thereof, and shall verify enrollment of Tribal members to appropriate agencies as well as to maintain the base roll of the tribe and keep current the tribal membership roll.

Section 4. Recording Secretary. The Recording Secretary shall keep and maintain in a permanent record book a

record and minutes of all transactions and meetings of the Tribe and the Tribal Council, and shall upon request of the Chairman, attest to the authenticity thereof.

Section 5. Treasurer. The Treasurer shall receive, deposit and disburse the funds of the Tribe, and shall keep an account and records thereof in a permanent record book, as required and directed by the Council. The Treasurer shall disburse all funds as ordered by the Council.

Section 6. Sergeant-at-Arms. The Sergeant-at-Arms shall keep order at all meetings of the Tribe and the Tribal Council.

Section 7. Other Officers. Persons appointed/elected to such other offices as the Tribal Council hereafter may create shall have and exercise such powers and duties as the Tribal Council may specify, consistent with this Constitution.

ARTICLE IX – ELECTIONS

Section 1. First Election. The first election of officers under this Constitution shall be held at the August annual meeting of the Tribe following the ratification thereof. The officers serving under the Tribe's former Constitution when this Constitution is ratified shall continue in office until their successors are elected hereunder.

Section 2. Election Ordinance. Within 180 days after ratification of this Constitution, the Tribal Council shall enact an Election Ordinance which establishes an Election Committee and the rules and procedures under which that Committee shall conduct and supervise Tribal elections and Band elections held pursuant to Article VII, Section 2(e).

Section 3. Qualifications for Office. Any enrolled Tribal member at least eighteen (18) years of age shall be qualified to be elected as a Tribal Officer. Any enrolled Band member at least eighteen (18) years of age shall be qualified to be elected as Councilperson for the Band of which he/she is a member.

Section 4. Voter Qualification. Voting in Tribal elections shall be limited to enrolled Tribal members who are at least eighteen (18) years of age on the date of the election in which they vote.

Section 5. Recall

a. Tribal Officers. Within thirty (30) days after receipt by the Election Committee of a valid petition signed by at least fifty (50) registered/enrolled adult members of the Tribe, the Election Committee shall schedule and conduct a special meeting of the Tribe at which the membership shall vote by secret ballot on the recall of any elected Tribal Officer. At least ten (10) days before said meeting, the officer shall be given a copy of the recall petition submitted to the Election Committee, and shall be given an opportunity to address the persons attending the recall meeting before voting begins. Said meeting shall be subject to the quorum provisions set forth in Article XI, Section 2(a). An elected official may be subjected to recall proceedings only once during any term of office.

b. Councilmembers. Upon representation to the Tribal Council of a petition for the recall of the Council member, validated by the Election Committee as signed by a majority of the enrolled/registered adult members of the Band(s) represented by the Council member named in said Petition, that member shall be deemed recalled. Within thirty (30) days after presentation of such a petition to the Tribal

Council, the Election Committee shall schedule and conduct among the members of the Band(s) whose Council member was recalled, a duly-noticed special meeting at which the adult Band members shall elect a successor Council member to serve until the next annual general meeting of the Tribe.

Section 6. Initiative. Upon receipt by the Election Committee of a valid petition signed by at least fifty (50) of the enrolled/registered adult members of the Tribe, the election Committee shall call and conduct within sixty (60) days, an initiative election at a special meeting of the Tribe. Such meeting shall be for the purpose of presenting to the qualified voters for their determination any issue or question except recall, and as otherwise provided by this constitution. Said meeting shall be subject to the quorum provisions set forth in Article XI, Section 2(a). A decision by the majority of those voting shall be binding on the Tribal Council until it expires by its own terms or is otherwise changed by action of the voters. Once an initiative issue has been submitted to the voters and rejected, that same issue shall not again be considered for such action for at least six (6) months.

Section 7. Referendum upon receipt of a valid resolution supported by an affirmative vote of a quorum of the Tribal Council, the Election Committee shall refer to the voters for their determination, such issue(s) as may be requested by the Tribal Council. The referendum may be conducted at an annual or special meeting of the Tribe. Said meeting shall be subject to the quorum provisions set forth in Article XI, Section 2(a). A majority of those voting shall decide the issue and such decisions shall be binding on the Tribal Council until otherwise changed by the voters.

ARTICLE X – VACANCIES AND REMOVAL

Section 1. Officers

a. Tribal Chairman. In the event that the position of Tribal Chairman becomes vacant by death, resignation or incapacitation, the Vice-Chairman automatically shall succeed the Chairmanship. The Vice-Chairman shall serve as Chairman until the next regularly scheduled election of Chairman.

b. Other Elected Officers. Vacancies by reason of death, resignation or incapacitation in the offices of Vice-Chairman, Secretary, Recording Secretary, Treasurer and Sergeant-at-Arms shall be filled by appointment by the Tribal Council within fourteen (14) days after the office becomes vacant. Appointees shall serve until the holding of a special general election meeting, or until the next regularly scheduled general election meeting, whichever is sooner.

Section 2. Council Members

a. Vacancies on the Tribal Council shall be filled by an election conducted by the Election Committee among the members of the Band(s) represented by the vacant position, within thirty (30) days after the position becomes vacant. The successor thus elected shall serve until the next regularly-scheduled Tribal general election meeting.

b. The Tribal Council may declare a Council seat vacant if a member misses three (3) consecutive meetings or commits any unlawful act which results in financial loss to the Tribe.

ARTICLE XI – MEETINGS

Section 1. Tribal Council

a. Quorum. Six of the eleven elected members of the tribal Council, or their alternates, shall constitute a quorum. No enactment of the Tribal Council will be valid in the absence of a quorum. Once a quorum is established at a meeting, it shall continue until the meeting is officially adjourned, provided that at least four Council members are present.

b. Regular Meetings. Regular meetings of the Tribal Council shall be held monthly at a place and date established by ordinance of the Tribal Council. The Tribal Secretary shall be responsible for telephoning or sending written notices to each Council member so as to provide at least one (1) day advance notice of the meeting if the regular meeting date and/or place should have to be changed. The Tribal Council shall have the authority to meet and act in executive session at any Tribal Council meeting for the purpose of discussing and voting upon matters having to do with personnel, and when confidentiality is necessary to protect the rights, interests and positions of the Tribe.

c. Special Meetings. Special meetings of the Tribal Council may be called by the Chairman at his discretion, or shall be called by the Chairman upon the written request of at least three (3) members of the Tribal Council; *provided*, that the reason for the meeting is stated in the request and that each member of the Tribal Council is given at least 24 hours advance notice of any special meeting. Upon refusal by the Chairman to call a special meeting within 24 hours upon the written request of three (3) members of the Tribal Council, those members who

requested the special meeting may proceed to call and conduct the special meeting.

Section 2. General Membership:

a. Quorum of General Membership for purposes of Recall, Article IX, Sec. 5; Initiative, Article IX, Sec. 6; and Referendum, Article IX, Sec. 7. Fifty (50) qualified voters of the tribe shall constitute a quorum at meetings of the general membership for purposes of Recall, Initiative and Referendum. No action of the general membership for purposes of Recall, Initiative or Referendum shall be valid in the absence of a quorum.

b. Annual meetings. The general membership of the Tribe shall meet annually in August on a date, time and place established by the Tribal Council. The Tribal Secretary shall cause notice of the Annual meeting to be given at least thirty (30) days in advance of said meeting.

c. Special Meetings. Special general meetings may be called at the discretion of the Tribal Chairman; *provided*, that in each instance, a notice stating the date, time, place and purpose of the meeting shall be posted and published at least three days in advance thereof. Special meeting shall be called by the Tribal Chairman upon his/her receipt of a valid request signed by at least fifty (50) of the Tribe's enrolled/registered adult members, or by resolution of the Tribal Council. The petition or resolution must state the purpose of the meeting. If, upon validation of the petition by the Election Committee, the Tribal Chairman does not call and notice the meeting within fifteen (15) days after validation, the Tribal Vice-Chairman shall exercise such authority.

ARTICLE XII – SEVERABILITY & SAVINGS AND RATIFICATION OF PRIOR TRIBAL ACTIONS

Section 1. Severability and Savings Clause

If any provisions of this Constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

Section 2: Ratification of Prior Tribal Actions

The Pit River Tribe (Ajumawi-Atsugewi Nation) hereby ratifies all actions taken by the Tribe and/or the Tribal Council under the Tribe's 1964 Constitution, and such actions as are consistent with this Constitution shall be of continuing effect.

ARTICLE XIII – AMENDMENTS

This Constitution may be amended by a majority vote of the enrolled members of the Tribe voting at an election called for that purpose by the Election Committee pursuant to Article IX, Section 6 and/or 7. It shall be the duty of the Election Committee to call an election on any proposed amendment upon the receipt of a valid petition signed by at least fifty (50) of the Tribe's enrolled/registered adult members, or by a resolution passed by an affirmative vote of a quorum of the members of the Tribal Council.

ARTICLE XIV – ADOPTION

This Constitution shall become effective when adopted by a majority vote of the registered adult Pit River Tribe (Ajumawi-Atsugewi Nation) voters who cast ballots at an

election called and conducted pursuant to regulations of the Secretary of the Interior.

ARTICLE XV
CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by Assistant Secretary – Indian Affairs the attached Constitution was submitted to the qualified voters of the tribe and on August 15, 1987, was duly adopted by a vote of 51 for and 29 against and 11 cast ballots found spoiled or mutilated in an election in which at least 30 percent of the 123 members entitled to vote, cast their ballot in accordance with 25 CFR 81.

/s/ Amy L. Dutschke — 8/16/87
Amy L. Dutschke — Date
Chairperson, Election Board

/s/ Martha Kaiser — 8/16/87
Martha Kaiser — Date
Election Board Member

/s/ Jessica Jim — 8/16/87
Jessica Jim — Date
Election Board Member

ARTICLE XVI – APPROVAL

I, /s/ Ross O. Swimmer, Assistant Secretary of the Interior for Indian Affairs, by virtue of the authority vested in me do hereby approve this Constitution of the Pit River Tribe (Ajumawi-Atsugewi Nation). It shall be come [sic] effective upon ratification pursuant to the [sic] Article XIV of this Constitution. Nothing in the approval shall be construed as authorizing any action taken under this Constitution which would be contrary to Federal law.

12/3/87
Date
Washington, DC

/s/ Ross O. Swimmer
Assistant Secretary –
Indian Affairs